

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND SURVEYORS**

In the Matter of:

Fanning & Company, LLC
License No.: N/A

Respondent.

Case No.: 2012-30

FINAL ORDER

Addendum: The above-referenced Final Order, executed October 11, 2013, is hereby amended to correct the fine amount per violation in Number 2 of the sanction from \$4,000 per violation to \$1,000 per violation, as follows:

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In the Matter of:

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Respondent.

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FINAL ORDER
Scrivener's Error Correction

2. Respondent must pay a fine of \$1,000.00 per violation as alleged in the complaint, for a total of \$4,000.00. The fine must be paid before a Certificate of Authorization may be issued.

Date of Correction: October 21, 2013

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND SURVEYORS**

In the Matter of:

**Fanning & Company, LLC
License No.: N/A**

FINAL ORDER

Respondent.

Case No.: 2012-30

This matter came before the South Carolina Board of Registration for Professional Engineers and Surveyors (the "Board") for hearing on August 12, 2013, as a result of the Amended Notice of Hearing and Formal Complaint served upon the Respondent Fanning & Company, LLC, on July 2, 2013 and filed with the Board. The matter was noticed for hearing due to the application submitted by Respondent, and whether or not previous action taken by Respondent constituted a violation of South Carolina law. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§ 40-22-400, S.C. Code Ann. § 40-1-70(6), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended), to determine whether sanctions should be imposed upon the Respondent. Erin Baldwin, Assistant General Counsel, represented the State. Respondent Daniel P. Fanning, the responsible engineer for the Firm, appeared *pro se* and testified.

Respondent Fanning & Company, LLC was charged with violation of S. C. Code §§ 40-22-30(A)(1), 40-22-30(A)(2), 40-22-30(A)(3), and 40-22-30(C) (1976, as amended).

At the beginning of the hearing, Mr. Love, Board Member, disclosed he works for Collins & Co. but that he had no knowledge of the case and felt he could be fair and impartial. Neither the State nor Respondent objected to Mr. Love's participation in this case.

Evidentiary Exhibits

Notice of Hearing and Formal Complaint, with exhibits

Witnesses:

Daniel F. Fanning, president of Respondent

FINDINGS OF FACT

At the hearing the Respondent admitted the facts stated in the Complaint; however Respondent testified that he did not believe these facts constituted a violation of the practice act. The remaining paragraphs of the Findings of Fact were made by the Board based upon the exhibits in the record, testimony, responses to questions posed by Board members, and the Board members' knowledge of value engineering:

1. Respondent is a South Carolina limited liability company, formed on or about May 18, 2005.

(Application, Complaint Exhibit 2).

2. On or about October 1, 2006, Respondent entered into a three-year contract with the South Carolina Department of Transportation, ("SCDOT"), to perform value engineering services on an "on call" basis. (Complaint Exhibit 1) Respondent was not registered in South Carolina at the time the contract was executed.
3. On or about April 1, 2008 the Board issued a Cease and Desist Order to Daniel Fanning, President of Respondent firm, and to Respondent firm, requiring them to cease and desist from the practice of engineering without a license. (Complaint Exhibit 2).
4. On or about January 22, 2010, Respondent again contracted with SCDOT for "on call" value engineering services for an additional three-year term. (Complaint Exhibit 3).
5. Daniel P. Fanning, president of Respondent, and a duly licensed professional engineer in the state of Rhode Island, did not receive his South Carolina engineering license until October 22, 2010.
6. On or about September 10, 2012, Respondent submitted a Certificate of Authorization ("COA") application which acknowledges that the firm performed value engineering study services prior to being licensed in South Carolina. Specifically, Respondent admitted to conducting value engineering study facilitation services for SCDOT, but qualified this admission by expressing a belief that these services do not constitute "engineering per say [SIC]." (Complaint Exhibit 4).
7. Mr. Fanning testified the Respondent has a specialty practice in value engineering and that SCDOT now calls the consulting service Respondent renders a value analysis study rather than value engineering. Value engineering seeks to identify potentials for efficiency gains. The service typically involves examining a project, fact finding, analysis and recommendations. Mr. Fanning testified the Respondent comes up with ideas, and produces a list of recommendations, rather than designing anything. Mr. Fanning described Respondent's role as being a member of a study or technical team, with no responsibility for any recommendations for design changes. Mr. Fanning contends that responsibility for recommendations for design changes resides instead with the engineer of record for the project.
8. Respondent's 2006 contract with SCDOT defines the scope of services for value engineering as including six phases :
 - a. Investigative Phase: gather information to better understand the project.
 - b. Analysis Phase: identify elements with the greatest potential for value improvement.
 - c. Speculation Phase: develop alternatives.
 - d. Evaluation Phase: determine the best alternatives.
 - e. Development Phase: fully develop the best alternatives.
 - f. Presentation Phase: Present the recommendations (Complaint Exhibit 1, Schedule A).
9. The 2006 and 2010 contracts between Respondent and SCDOT ("Contracts") contain provisions for checking and reviewing plans that are in conformance with the project specifications and for

Respondent to signify its approval on all plans, specifications and estimates prepared and delivered under the Contracts. The Contracts provide that all work by Respondent is to be done in accordance with the established customs, practices and procedures of SCDOT as well as of the Federal Highway Administration.

10. There is an "Engineer Certification for Project Plans and Specifications" form ("Certification Form") which is part of the 2006 Contract. The Certification Form includes the following statements, among others:

"THE UNDERSIGNED CERTIFIES to be a South Carolina registered engineering firm with absolute authority to accept the responsibility for the project plans and specifications involved in the project;"...

"THE UNDERSIGNED CERTIFIES that each project plan sheet submitted on this project will be signed and sealed by a South Carolina Registered Engineer;" and

"THE UNDERSIGNED CERTIFIES that all worked performed under this contract will be performed in accordance with the special provisions and specifications, and will be performed so as to meet or exceed reasonable standard of care of the profession....."

The Certification Form expressly states that it "is attached to and become part of the agreement and the project...."

CONCLUSIONS OF LAW

1. The Board has jurisdiction over practice undertaken by individuals and firms and the actions committed or omitted by current and former licensees during the entire period of licensure. The Board has jurisdiction to act on any matter which arises during the practice authorization period of licensed practitioners and firms. S.C. Code Ann. § 40-22-115 (1976, as amended). Additionally, the Board may deny or otherwise restrict the authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board. S.C. Code Ann. § 40-1-130.

2. It is unlawful for a firm in a public or private capacity to practice or offer to practice engineering or surveying without being licensed and holding a valid authorization to practice S.C. Code Ann. §§40-22-30(A)(3) 40-22-250 (1976, as amended). The practice of engineering in South Carolina is not limited to design services. South Carolina Code Ann. §40-22-2-(23) provides that the practice of engineering includes:

any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences to such services or creative work, as *consultation, investigation, . . . evaluation*, design and design coordination of engineering works and systems, design for development and use of land and water, *performing engineering surveys and studies*, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems projects, and industrial or consumer products or equipment of control systems, communications, mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve

safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

3. Upon finding that a licensee has violated the provisions of S.C. Code Ann. §§ 40-1-110 or 40-22-110 (1976, as amended) the Board, has the authority, pursuant to S.C. Code Ann. §§ 40-22-110 and 120 (1976, as amended), to order the revocation, suspension, or refusal of a certificate of registration, publicly reprimand the holder of a certificate of registration, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the practice of a registrant. Additionally, the Board may require the holder of a certificate of registration to pay a civil penalty of not more than One Thousand Dollars (\$1,000.00) to the Board for each violation of S.C. Code Ann. § 40-22-120, *et seq.*, or the Rules and Regulations of the Board, with the total of these civil penalties not to exceed a total of Twenty Thousand Dollars (\$20,000.00). Further, pursuant to S.C. Code Ann. § 40-1-170, should the holder of a certificate of registration be found in violation of the offenses charged, said registrant may be directed to pay a sum not to exceed the reasonable costs of the investigation and prosecution of the case. These costs are to be assessed in addition to any sanction that may be imposed.

4. Respondent violated S.C. Code Ann. § 40-22-30(A)(1) in that he and his company practiced or offered to practice engineering for the SCDOT without being licensed to practice. Specifically, Respondent provided value engineering services, used to analyze design and construction projects to achieve an optimum balance between required functions, performance, quality, safety, and scope with the cost and other resources necessary to accomplish those requirements. In order to provide the value engineering services Respondent contracted to provide SCDOT, Respondent was required to check and review plans in conformance with the project specifications and to provide recommendations that were within such specifications. Providing that service for SCDOT requires engineering education, training, and experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences, and therefore constitutes the practice of engineering.

5. Respondent violated S.C. Code Ann. § 40-22-30(A)(2) in that Respondent firm used a title or description of his services that he was registered under the provisions of S.C. Code Ann. § 40-22-2 *et seq.* Specifically, Respondent signed contracts, such as the 2006 contract which stated "THE UNDERSIGNED CERTIFIES to be a South Carolina registered engineering firm with absolute authority to accept the responsibility for the project plans and specification involved in the project;" . . . Despite signing this contract, Respondent was not licensed in South Carolina at the time and did not seek to become registered until 2012.

6. Respondent violated S.C. Code Ann. § 40-22-2(A)(3) in that it is unlawful for a firm to practice or offer to practice engineering without being licensed and holding a valid authorization to practice as provided in S.C. Code Ann. § 40-22-250. Specifically, Respondent provided value engineering services, used to analyze design and construction projects to achieve an optimum balance between required functions, performance, quality, safety, and scope with the cost and other resources necessary to accomplish those requirements. In order to provide the value engineering services Respondent contracted to provide SCDOT, Respondent was required to check and review plans in conformance with the project specifications and to provide recommendations that were within such specifications. Providing that service for SCDOT requires engineering education, training, and experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences, and therefore constitutes the practice of engineering. Additionally, Respondent signed contracts, such as the 2006 contract which stated "THE UNDERSIGNED CERTIFIES to be a South Carolina registered engineering firm with absolute authority to accept the responsibility for the project plans and specification involved in the

project;" ... Despite signing this contract, Respondent was not licensed in South Carolina at the time and did not seek to become registered until 2012.

7. Respondent violated S.C. Code Ann. § 40-22-30(C) in that it is unlawful for an individual or firm to engage in the practice of engineering in this State or use the title "engineer" or to use or display any title, verbal claim, sign, advertisement, letterhead, card, or other device or method to indicate that the individual or firm engages in or offers to engage in the practice of engineering without being registered as an engineer or firm. As concluded above, Respondent both certified to be a registered firm and held out as an engineer while contracting and providing value engineering services in South Carolina.

THEREFORE, IT IS ORDERED that

1. Respondent is hereby publicly reprimanded.
2. Respondent must pay a fine of \$4,000.00 per violation as alleged in the complaint. The fine must be paid before a Certificate of Authorization may be issued.

AND IT IS SO ORDERED.

**SOUTH CAROLINA BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS AND
SURVEYORS**

10/11/13
Date

BY: Theresa H Hodge
THERESA H. HODGE, P.E.
Chairman of the Board